

REMARKS

A. Period For Reply

A shortened statutory period for reply was set to expire three months from the mailing date of the Office Action of June 28, 2005. Three months from June 28, 2005 is Wednesday, September 28, 2005. This Amendment and Remarks is thus being filed on or before Wednesday, September 28, 2005.

B. Status

The Office Action of June 28, 2005 was a non-final Office Action. This is appreciated.

C. Disposition Of Claims

Claims 12 and 43 are pending.

D. Application Papers

At the appropriate time, approval of the formal drawings would be very much appreciated.

E. Priority under 35 U.S.C. §§ 119 and 120

As to foreign priority, this case does not claim foreign priority.

As to domestic priority, this case does not claim domestic priority.

F. Attachments

Applicant has filed two PTO-1449 forms in this case, one with the filing of this case on January 18, 2002 and one on April 28, 2003. These PTO-1449 forms have been signed and all of the references listed on the forms have been initialed by the Patent Office. This is appreciated.

G. Amendments to the claims

Claims 12 and 43 have been amended as suggested by section 4 of the Office Action to recite "adapted to" language.

H. The Office Action

H.1. Section 1 of the Office Action

In section 1 of the Office Action, the Office Action stated that applicant's arguments filed 4/12/05 have been fully considered but were not persuasive.

H.2. Section 2 of the Office Action

In section 2 of the Office Action, the Office Action responded to applicant's arguments that the periphery extends to a position on the front of the chin and not below by stating that it should be noted that depending on the face structure and the size of the face of the wearer, the periphery would sit on the front of the chin and not below. This rejection is respectfully traversed. However, it is acknowledged that applicant may file a divisional application as to a method of use.

H.3. Section 3 of the Office Action

In section 3 of the Office Action, the Office Action argues that applicant in the specification as originally filed does not define an uninterrupted endless seal to preclude slits or limit that definition to a particular structural feature. Such is respectfully traversed, and applicant's discussion in sections G.1.a., G.1.b., and G.2. of the Amendment and

Remarks dated April 12, 2005 is hereby incorporated by reference.

In section 3 of the Office Action, the Office Action maintains that Hollander does teach an uninterrupted endless seal. Such is respectfully traversed, and applicant's discussion in section I.2.b. of the Amendment and Remarks dated April 12, 2005 is hereby incorporated by reference.

H.4. Section 4 of the Office Action

In section 4 of the Office Action, claims 1, 10, 11, 12, and 43 were rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter on the ground that claims 1, 12 and 43 improperly recite a part of the human body with respect to "an uninterrupted endless seal that completely surrounds the nostrils and mouth." Further in section 4, the Examiner suggested the following recitation, --an uninterrupted endless seal adapted to completely surround the nostrils and mouth.-- Such suggestion has been adopted for claims 12 and 43 (claims 1, 10 and 11 have been cancelled). Accordingly, it is respectfully submitted that claims 12 and 43 are now in compliance with 35 U.S.C. 101.

Section 5 of the Office Action

In section 5 of the Office Action, a quotation of 35 U.S.C. 103(a) was set out.

Sections 6-10 of the Office Action

In section 6 of the Office Action, claims 1 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollander et al. (WO 99/65347). This rejection is

respectfully traversed. However, to expedite prosecution of this application, claims 1 and 10 have been cancelled.

In sections 7 and 8 of the Office Action, claims 1 and 10, respectfully, were discussed.

In section 9 of the Office Action, claim 11 was rejected under 35 U.S.C. 103(a) as being unpatentable over Hollander et al. (WO 99/65347) in view of Braunroth (US 4,503,8541). This rejection is respectfully traversed. However, to expedite prosecution of this application, claim 11 has been canceled.

In section 10 of the Office Action, claim 11 was discussed.

I. Information Disclosure Statement

It should be noted that applicant is, under the same cover as this Amendment and Remarks, submitting an Information Disclosure Statement with the required fee of \$180. The Information Disclosure Statement contains a) references cited by an International Search Report dated June 7, 2005 of the corresponding international application PCT/US03/07052 and b) references cited by an Office Action dated June 10, 2005 in divisional case 10/10/747,375. Consideration of such references would be appreciated.

J. Summary

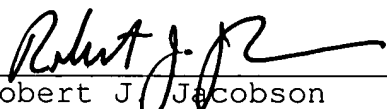
Claims 12 and 43 remain in this case. These claims have been amended as suggested by the Examiner and hence the rejection of these claims under 35 U.S.C. 101 is respectfully submitted to have been overcome. Further, the references of the International Search Report or the Office Action of divisional case neither anticipate nor render obvious the limitations of claims 12 and 43. Accordingly,

it is respectfully submitted that claims 12 and 43 are allowable.

The Examiner is respectfully invited to make contact with the undersigned by telephone if such would advance prosecution of this case.

Respectfully submitted,

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